IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 3873 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

GANPATBHAI GIRDHARBHAI RANA - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :
MR RR VAKIL for Applicant(s) : 1,
Ms. Mita S. Panchal, addl.PUBLIC PROSECUTOR for Respondent(s) : 1,
MR IS SUPEHIA for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 11/04/2007

ORAL JUDGMENT

1. The petitioner, original accused, has invoked the provisions of section 482 of the Criminal

Procedure Code, 1973 (for short, "the Code") for an order to set aside Criminal Complaint No.2581 of 1996 filed by respondent No.2 herein, who is the original complainant. The complaint was made for the alleged offence of defamation punishable under section 500 of the Indian Penal Code, 1860 and after recording evidence below it, the Learned Metropolitan Magistrate was pleased to issue summons by order dated 10.9.1996. The complaint is based upon a public notice published at the instance of the petitioner so as to inform the public, institutions and banks that any transaction in respect of a particular property would be void and not binding on the petitioner in view of the dispute regarding sale of that property.

2. Bare reading of the complaint itself reveals that the complainant had entered into an agreement on 21.1.1994 to sell the immoveable property in question for a sum of Rupees two lakhs and thereafter, by a notice dated 20.6.1995, the agreement was sought to be cancelled and the amounts already paid to him were sought to be forfeited even

as the notice dated 20.6.1995 to that effect was not replied by the petitioner. On the other hand, possession of the property was given away to the petitioner and possession was remaining with him. It is alleged in the petition by making averments on oath that after the petitioner was put in possession of the property, receipt was also issued on a stamp paper by the complainant wherein he had clearly stated that he had received the sum of Rs. 1,57,000/- and handed over possession. By notice dated 15.6.1995. The petitioner had made it clear that he was ready and willing to pay the remaining amount of Rs.43,000/- immediately. As the petitioner was apprehending that the property was likely to be again sold away to someone else or encumbered, he had given the notice in question in the newspaper "Sandesh" on May 6, 1996. It is alleged that as a counterblast to that notice, the complaint was filed by way of an abuse of the process of law. It was submitted that the complaint contained allegations which were inherently absurd and did not constitute any offence. It was also submitted that the complainant was trying to pressurise the petitioner to submit to his

unreasonable demands on the basis of the transaction of purely civil nature.

3. The respondent has not cared to file any affidavit-in-reply and no submission was made by learned counsel for the original complainant, who rested his case with the only submission that the court may pass appropriate order and the allegations could be established only by leading evidence in the trial court. Thus, in the wake of such non-assistance on behalf of the original complainant, it has to be decided whether this is a fit case for quashing the complaint and the process issued against the petitioner in exercise of inherent powers of this court to prevent abuse of the process of court and secure the ends of justice.

4. The offence of defamation is defined in section 499 of the Indian Penal Code and the important ingredients of the offence are, making of any imputation intended to harm the reputation of any person, subject to the Exceptions provided under that section. According to the First Exception, it is not

defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for public good is a question of fact. As seen earlier, the public notice in question was expressly issued to warn the public and financial institutions against entering into any transaction in respect of the immoveable property which was the subject-matter of a dispute and to inform that such transaction would not be binding on the petitioner. Publication of such notice would necessarily be in the public interest and, at times, essential for protecting the interest of the petitioner as well as unwarying members of the public who may enter into a transaction in respect of the property, which would result into multiple litigations and legal complications. Therefore, the notice in question, *ex-facie,* appears to have been published for public good. In that view of the matter, the offending notice appears to be covered by First Exception to the definition of defamation given in section 499 of the Indian Penal Code. Even otherwise, the criminal proceeding initiated by the complainant clearly

appeared to be calculated to pressurise the petitioner while dispute of a civil nature regarding the property was, admittedly, the subject-matter of another litigation. Therefore, the impugned complaint and criminal case amount to an abuse of the process of court without any chance of the prosecution being successful.

5. In the facts and for the reasons discussed hereinabove, the petition is allowed and Criminal Case No.2581 of 1986 pending in the court of learned Metropolitan Magistrate, Ahmedabad along with the orders made therein, is quashed. Rule is made absolute with no order as to costs.

sd/-
[D. H. Waghela, J.]

msp